



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Mandi Payton, Ohio Environmental Protection Agency

FROM: Jacob Ritzenthaler, Business Advocate

DATE: November 12, 2024

RE: **CSI Review – Standardized Permitting, RAP, and RD&D Permits (OAC Chapters 3745-50, 3745-51, 3745-52, 3745-53, 3745-54, 3745-55, 3745-57, 3745-65, 3745-66, 3745-205, 3745-256, 3745-266, 3745-267, 3745-270, and 3745-273)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of 118 amended rules, 78 new rules, and five rescinded rules proposed by the Ohio Environmental Protection Agency (OEPA) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on September 20, 2024, and the public comment period was held open through October 21, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on September 20, 2024.

The rules in this package set forth requirements for hazardous waste facilities, including permitting, generation, transportation, treatment and disposal, facilities operating under standardized permits, and land disposal restrictions. The rules include new hazardous waste permitting concepts authorized by the federal government and previously unavailable in Ohio, including standardized permitting, Remedial Action Plan (RAP) Permits, and Research, Development, and Demonstration (RD&D) Permits. These permitting rules offer additional pathways for obtaining a permit and new flexibilities for innovative businesses in Ohio to utilize and test new technologies.

Ohio Administrative Code (OAC) 3745-50-01 and 3745-50-02 set forth general information and

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business confidentiality standards related to hazardous waste management and have been amended to streamline language. OAC 3745-50-10 sets forth definitions and has been amended to establish new definitions for corrective action management units, new hazardous waste management facilities, RAPs, and standardized permits. OAC 3745-50-11 sets forth standards incorporated by reference and has been amended to add new references to gross national product price deflator, the Survey of Current Business, the Securities and Exchange Commission Form 10-K, and to remove references to two American Society for Testing and Materials standards. OAC 3745-50-21, 3745-50-22, and 3745-50-39 are proposed for rescission and address draft permits, fact sheet requirements for draft permits, and hazardous waste permit notice procedures, having been relocated elsewhere in the chapter. OAC 3745-50-28 describes the procedures used to determine whether to regulate certain hazardous waste activities. OAC 3745-50-40, 3745-50-41, and 3745-50-42 set forth requirements surrounding the submission of hazardous waste permit applications and have been amended to authorize the director to include additional terms and conditions in a permit when necessary to protect the human health and environment, to provide additional information surrounding the application process, to clarify options for reapplications, and to provide an additional certification alternative for RAPs. OAC 3745-50-44 establishes Part B content requirements for permit applications and is amended to specifically authorize the director to deny a permit application entirely or for the active life of the facility or unit. 3745-50-45 sets forth inclusions and exclusions and is amended to include deep underground injection control permit holders in possession of a hazardous waste permit if the unit or facility is in compliance and to require the director to provide a public notification in cases where no post-closure permit is determined to be necessary. OAC 3745-50-46 deems publicly owned treatment works in possession of a hazardous waste permit in certain conditions, while OAC 3745-50-47 is a new rule that provides an overview of the hazardous waste management permit program rules and processes.

OAC 3745-50-48 addresses monitoring requirements, while OAC 3745-50-51 sets forth permit modifications standards and has been amended to specify actions taken by the director in response to a modification request. OAC 3745-50-52 sets forth requirements for transferring a permit, and new OAC 3745-50-56 addresses the continuation of a permit that has expired when the permittee has timely requested a new permit, but one has yet to be issued. Existing OAC 3745-50-56, which also addresses the continuation of expiring permits, is proposed for rescission due to the proposed new version of the rule. OAC 3745-50-57 and 3745-50-59 concern emergency permits and conditions applicable to all hazardous waste permits. OAC 3745-50-65 and 3745-50-67 are new rules that authorize and regulate the issuance of RD&D permits, as well as standardized permits for storage and treatment units. OAC 3745-50-68, 3745-50-80, 3745-50-95, 3745-50-130, and 3745-50-170 are new rules that allow for the issuance of RAPs, provide general information and application standards for such plans, set forth the director's evaluation of a RAP application, and define procedures for revoking or modifying a plan, as well as the potential duration of a RAP. New OAC 3745-50-210 sets forth operational requirements for RAPs, including recordkeeping requirements, transfer requirements (if applicable), and reporting requirements, while new OAC 3745-50-230 addresses

remediation waste management activities at an alternate location.

OAC 3745-50-250, 3745-50-270, and 3745-50-290 are new rules that set forth general information regarding standardized permits for storage and treatment units, application requirements for storage and treatment units, and required records to be maintained by such units. New OAC 3745-50-320 allows for the modification of a standardized permit. New rules OAC 3745-50-501 and 3745-50-502 set forth the purpose, scope and relevant definitions for hazardous waste permit rules. OAC 3745-50-505, 3745-50-506 and 3745-50-508 are new rules that authorize (with limitations) the modification, revocation, or termination of hazardous waste permits, allows for the preparation of draft permits, and require the use of fact sheets for draft permits. New rule OAC 3745-50-531 requires public notice procedures for initial hazardous waste permits. OAC 3745-50-700, 3745-50-702, 3745-50-704, 3745-50-707, and 3745-50-711 are new rules that provide general guidance for standardized permit procedures, application instructions for standardized permit applications, requirements for the director to prepare a standardized permit, public notice requirements for standardized permits, and requirements to maintain standardized permits.

OAC Chapter 3745-51 provides for the identification and listing of hazardous waste. In addition to incorporating the three new hazardous waste permitting concepts, the rules are amended to make technical corrections, require hazardous secondary material generators or United States authorized agents to submit electronic export information to the Automated Export System prior to each shipment of hazardous secondary material from the U.S., and update language, citations, grammar, and a sampling test method identification number.

OAC Chapter 3745-52 establishes standards for generators of hazardous waste. OAC 3745-52-01 provides definitions relevant to the chapter and is amended to update references to other rules. OAC 3745-52-10 sets forth the applicability of the rule requirements and is amended to reorganize comments and update language. OAC 3745-52-11 concerns the determination of waste as hazardous waste and recordkeeping. The rule is amended to update language and references. OAC 3745-52-13 sets forth requirements for the determination of a generator's category. OAC 3745-52-14 provides the conditions for exemption for very small quantity generators and is amended to include additional requirements for a very small quantity generator when it accumulates more than 1 kilogram of acute hazardous waste or 100 kilograms of residue material, including requirements concerning notification, manifests, pre-transport requirements, recordkeeping, reporting, and transboundary movements. OAC 3745-52-15 sets forth requirements for satellite accumulation areas for small and large quantity generators. OAC 3745-52-16 and 3745-52-17 establish the conditions for exemption for small quantity and large quantity generators of hazardous waste and are amended to update references and remove unnecessary regulatory restrictions. OAC 3745-52-41 and 3745-52-42 establish requirements for biennial reports for large quantity generators and exception reports for small and large quantity generators. The rules include amendments that clarify and streamline

applicability requirements and update references. OAC 3745-52-200 lists definitions relevant to university labs and is amended to update references within the definition of “trained professional.” OAC 3745-52-212 provides requirements for making a hazardous waste determination at an on-site interim or permitted facility. The rule is amended to clarify rule requirements. OAC 3745-52-213 sets forth requirements for eligible academic entities to conduct a laboratory clean-out and is amended to include clarifying edits. OAC 3745-52-232 establishes the conditions for generators that manage hazardous waste from episodic events and is amended to require that very small quantity generators comply with the recordkeeping provisions for small quantity generators in OAC 3745-52-44, as well as other clarifying updates.

OAC 3745-53-12 establishes requirements for transfer facilities and is amended to update references. OAC 3745-53-20 sets forth requirements for transporters to only accept hazardous waste from a generator with a signed manifest form and other requirements for the acceptance and handling of hazardous waste. The rule is amended to update rule language. OAC Chapter 3745-54 establishes general standards for new facilities. Many of the proposed amendments in this chapter include updates to rule references, clarifications, or language edits. OAC 3745-54-01 sets for the purpose, scope, and applicability of OAC Chapters 3745-54 through 3745-57 and 3745-205. OAC 3745-54-12 concerns required notifications for facilities. OAC 3745-54-15 and 3745-54-16 establish requirements for general facility inspections and personnel training. OAC 3745-54-18 sets forth standards for the location of a facility with respect to seismic activity, floodplains, salt domes, salt bed formations, underground mines, or caves. OAC 3745-54-72 concerns discrepancies found in manifests, which include significant differences between the manifest and actual quantity of hazardous waste, rejected wastes, and container residues. OAC 3745-54-101 establishes the corrective actions for waste management units. OAC Chapter 3745-55 establishes requirements for corrective action, facility closure, post-closure care, and financial assurance and liability. OAC 3745-55-13 sets forth processes for the closure of a hazardous waste management unit or facility, including compliance with closure plans, timeframes, permit modifications, liner and leachate collection systems, and corrective action implementation. The rule includes an amendment that states final determinations by the director concerning closure due to failure to implement corrective actions are not subject to appeal. OAC Chapter 3745-57 establishes requirements for incinerators, including requirements for corrective action management units, temporary units, staging piles, drip pads, and environmental performance standards. These rules include amendments that update rule language and references, provide the location of referenced dates, and state requirements for owners to comply with RAP modification requirements for incorporating a staging pile or operating term extension.

OAC Chapter 3745-65 provides interim standards for hazardous waste management, including notification of requirements, manifest systems, and discrepancies. OAC 3745-65-12 is rescinded and replaced by a new rule due to reorganization. OAC Chapter 3745-66 sets forth closure and post-closure interim standards, including post-closure notices, container inspections, and procedures for

containment and detection of releases. The rules include amendments that remove a requirement for weekly container inspections to be recorded in an inspection log, as well as to update rule language and references. OAC Chapter 3745-205 establishes requirements concerning hazardous waste containment buildings, munitions, and explosives. The rules include requirements for the applicability of air emission standards for process vents, air emission leaks, tanks, surface impoundments, and containers. The rules are amended to update rule language and references. OAC Chapter 3745-256 sets forth requirements for containment buildings and military munitions, including requirements for the applicability of air emission standards for process vents, air emission leaks, tanks, surface impoundments, and containers. The rules are amended to update rule language and references. The rules in OAC Chapter 3745-266 contain standards for the management of specific types of hazardous waste. In addition to incorporating Standardized Permitting, the rules are amended to make technical corrections and update language, citations, grammar, rule titles, and a General Services Administration Standard Form number.

OAC Chapter 3745-267 consists of fifty-one new rules pertaining to standardized permitting for hazardous waste and address a variety of topics. These rules establish the definitions, purpose, scope, and applicability of the chapter, facility standards requirements related to waste analysis for operators prior to accepting hazardous waste, facility requirements which include security and inspection requirements, training requirements, waste handling requirements, requirements related to emergency prevention plans, and procedures which include equipment requirements, facility requirements, arrangement requirements, access requirements, and plan requirements. These rules also contain manifest requirements which address various manifest reporting, recordkeeping, access, and notification requirements, corrective action requirements, closure requirements, as well as financial and liability requirements. These rules further address requirements related to the use and management of containers used for storing hazardous waste, design, installation, construction, inspection, testing, operating requirements for tank systems or secondary containment systems used to store hazardous waste as well as requirements for when there is a leak or spill from the tank system or secondary containment system, requirements for when an operator closes a tank system, and air emissions standards. Finally, these rules address requirements for containment buildings used for the treatment or storage of hazardous waste. These requirements include design and operation requirements, release prevention and detection requirements, and requirements for closing containment building operations, as well as conditions when a containment building can serve as a secondary containment system, and waiver requirements.

OAC Chapter 3745-270 describes the hazardous wastes that are restricted from land disposal. The rules are amended to make technical corrections, add a newly defined term, and update language, citations, and grammar. OAC Chapter 3745-273 establishes universal waste management standards. In addition to incorporating standardized permitting, the rules are amended to make technical corrections, remove the requirement for petitions for regulatory amendment to be submitted to the

OEPA via certified mail, and update language, citations, and grammar.

During early stakeholder outreach, OEPA sent the proposed rules to industry stakeholders for a thirty-day comment period on October 4, 2023. OEPA received one comment during that time, which inquired about contingency plans found in OAC 3745-51-420. OEPA did not make changes based on this comment, stating that the rules are required to be equivalent to federal regulations to continue federal authorization of the hazardous waste program. No comments were received during the CSI public comment period.

The business community impacted by the rules includes all businesses that generate, treat, dispose, or transport hazardous waste. The adverse impacts created by the rules include the cost of obtaining a treatment, storage, and disposal permit, personnel training, safety equipment, inspections, and record maintenance. OEPA estimates that the cost of obtaining a permit can cost over \$100,000 depending on the nature of the hazardous waste management activity. The new standardized permitting pathway created in these rules, however, is estimated by OEPA to result in savings to the applicant ranging from \$183-\$38,000 per permit. OEPA also provided information to the CSI Office regarding additional benefits to business in the new rules, stating that the new pathway would allow hazardous waste generating facilities to store waste onsite in tanks, containers and containment buildings, allow facilities to treat waste non-thermally, and reduce the amount of information required for OEPA review, resulting in permit review time reductions of at least 25% or more. The new RD&D permit process allowed by this rule package will also enable facilities to utilize innovative technologies for treating hazardous waste for up to one year, allow modifications and waivers for certain requirements that would ordinarily be part of a standard permit, and allow flexibility to test new technologies before moving through the formal permitting process. As a result, these new options provide businesses with significant new flexibilities that are currently prohibited in Ohio.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that OEPA should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.